

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed on March 15, 2006. Claims 1-14 and 22 are pending and rejected in the Application. Claims 4, 12, and 22 have been amended. Applicants respectfully request reconsideration and favorable action in this case.

Procedural History

This is a return to prosecution from a Pre-Appeal Brief Request for Review. This is the third action on the merits. That the first two Office Actions presented rejections that were incorrect is confirmed by the decision on the Pre-Appeal Brief Request for Review. Applicants contend that the rejections presented in the current Office Action are similarly incorrect, as described below. Section 707.02 of the MPEP states that: "the supervisory patent examiners should impress their assistants with the fact that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying them." In addition, "supervisory patent examiners are expected to personally check on the pendency of every application which is up for the third or subsequent Office action with a view to finally concluding its prosecution." In view of MPEP 707.02, Applicants respectfully request that the Examiner's supervisor, Jay K. Patel, personally check on the pendency of this application with a view to finally concluding its prosecution.

Claim Objections

The Office Action states that Claims 5-7 and 12 are objected to because of the following informalities:

In Claims 5-7, line 3, "with a CPE device" should be "with the one or more CPE devices" as recited in Claim 1. Applicants respectfully traverse. Claim 5 recites "a line coupling the data switch with a CPE device." The use of "a CPE device" in Claim 5 is in reference to a single CPE device coupled to a switch by a single line. Favorable action is requested.

In Claim 12, line 5, "the PSDs" should be "the one or more PSDs." Applicants have

amended Claim 12. Favorable action is requested.

Rejections Under 35 USC § 112

The Office Action states that Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Applicants respectfully traverse. Claim 1 of Applicants' invention recites "a data switch . . . operable to: communicate with the one or more CPE devices using a first predetermined power spectral density (PSD); and communicate with the one or more CPE devices using a second predetermined PSD." The Office Action states that this is not described in Fig.2 of the disclosure, stating: "The data switch 12 communicate with the one CPE 24a with a predefined first predetermined PSD 34a/28a, a second predetermined PSD 34b/28b is used to communicate with the CPE 24b, but not the one CPE 24a." However, Fig.2 fully supports Claim 1. Fig.2 is discussed on pages 7-9 of Applicants' application and the discussion clearly describes a switch operable to communicate with one or more CPE devices using a first predetermined PSD and operable to communicate with the same CPE devices using a second predetermined PSD. For example, page 8, line 29 through page 9, line 5, Applicants' disclosure regarding Fig.2 states:

when switch 12 is set for operation in a regulated spectra environment . . . switch controller 38 may automatically configure each port 32 of switch 12 to use a particular PSD complying with the applicable public standards or regulations for communications with CPE devices 24. In this way, switch 12 may communicate with all CPE devices 24 using a standards-compliant PSD in a regulated spectra environment, but may communicate with different CPE devices 24 using different PSDs in an unregulated environment.

The above passage clearly states that in a regulated spectral environment, the switch is operable to communicate with CPE devices using a PSD that complies with regulations. In addition, the passage also states that in an unregulated spectra environment, the switch is operable to communicate with the same CPE devices using non-compliant PSDs. Therefore Applicants' Claim 1 is clearly enabled. Favorable action is requested.

The Office Action rejected Claim 4, stating that "the CPE device control packets" lacks an antecedent basis. Applicants have amended Claim 4. Favorable action is requested. The

Office Action also rejected Claim 22 stating that “the CPE devices” lacks antecedent basis. Applicants have amended Claim 22. Favorable action is requested.

Rejections Under 35 USC § 102 and 103

The Office Action states that Claims 1, 3, 4 and 8 are rejected under 35 USC § 102(e) as being anticipated by US Patent No. 6,829,252 to Lewin et al (“*Lewin*”), Claims 2, 5-7 and 11-14 are rejected under 35 USC § 102(e) as being anticipated by *Lewin* and US Patent Application No. 2002/0101914 to Say (“*Say*”), Claims 9 and 10 are rejected under 35 USC § 103(a) as being unpatentable over *Lewin* in view of US Patent Application No. 2002/0041572 to Palm (“*Palm*”); and Claim 22 is rejected under 35 USC § 103(a) as being unpatentable over *Say* in view of *Lewin*. Applicants respectfully traverse.

Lewin does not teach Claim 1’s limitation of “a data switch . . . operable to: communicate with the one or more CPE devices using a first predetermined power spectral density (PSD); and communicate with the one or more CPE devices using a second predetermined PSD.” Nowhere in *Lewin* are PSDs discussed at all, let alone the ability of a switch to communicate with CPEs using a first and second PSD. The Office Action states that label 18 from FIG.1 and label 102 from FIG.6 teaches the limitation of a data switch operable to “communicate with the one or more CPE devices using a second predetermined power spectral density.” No such teaching is shown by *Lewin*. Label 18 from FIG.1 identifies an ethernet source and label 102 from FIG.6 identifies a combined voice and data signal. Figures 1 and 6 of *Lewin* do not teach a switch operable to communicate with the one or more CPE devices using a second predetermined power spectral density. Furthermore, the passage from *Lewin* cited by the Office Action also demonstrates that *Lewin* does not teach this limitation. Column 12, lines 60-67 states:

The DSLAM typically is adapted to generate a plurality of VDSL streams to be transmitted over a plurality of VDSL facility channels #1 through #M. The VDSL signal received over each VDSL channel is processed by independent channel circuitry 130. Each channel circuit 130 comprises an analog front end 106, VDSL transceiver 108 and Ethernet bridge 110 with associated RAM 112 for performing conversion between Ethernet and HDLC.

Nowhere in this passage does *Lewin* teach a switch operable to communicate with one or more CPEs using a second predetermined PSD. The passage merely discusses the DSLAM

architecture. It does not address PSDs at all. In fact, nowhere in *Lewin* are PSDs discussed, much less the ability of a switch to communicate with CPEs using a first and a second PSD. For at least this reason, Claim 1 should be allowed as should the claims that depend therefrom.

With respect to Claim 22, the Office Action states that FIG.2 of *Say* discloses a “switch operable to: communicate with one or more CPE devices using a first power spectral density . . . [and] communicate with one or more CPE devices using a plurality of second PSDs . . .” This is simply incorrect. FIG.2 of *Say* illustrates a graph with frequency on the x-axis and PSD on the y-axis. For each frequency range (ID, IU, 2D, and 2U), the height is the same. Therefore, the PSD value of the frequency range on the y-axis is the same, i.e., each frequency range is using the same PSD. As a result, *Say* explicitly teaches against Applicants’ limitation. For at least this reason, Claim 22 should be allowed.

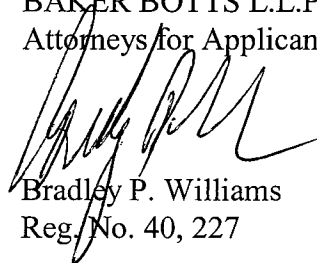
CONCLUSION

Applicants have now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicants respectfully request full allowance of all pending Claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, please feel free to contact the undersigned attorney for Applicants.

Applicants do not believe that any fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant



Bradley P. Williams
Reg. No. 40, 227

Date: _____

6/15/06

Correspondence Address:

Customer Number: **05073**